

**In Re: Adoption of emergency regulation,
Horseshoe Crab Annual Harvest Limit and Season**

Order No. 2007-F-0037

ORDER

AUTHORITY AND FINDINGS:

The Department is authorized pursuant to 7 *Del. C.* § 2701(d) to adopt emergency regulations when such regulations are necessary to deal with an actual or imminent threat to the horseshoe crab resources and the fishery thereof. Pursuant that authority, the Department of Natural Resources and Environmental Control hereby adopts the following emergency regulation. This emergency regulation supersedes Horseshoe Crab Regulation 3214, and any other Horseshoe Crab Regulation which is inconsistent or in irreconcilable conflict with the emergency regulation.

The emergency regulation is necessitated by the Memorandum Opinion in *Bernie's Conchs v. State*, C.A. No. 06A-12-005 RFS, Del. Super., June 8, 2007, which vacated Shellfish Regulation 3215, 10 DE Reg. 1029 (12/01/06). The emergency regulation is intended to be consistent with the requirements of the Atlantic States Marine Fisheries Commission's (ASMFC) Interstate Fishery Management Plan for Horseshoe Crabs as amended.

The only fishery for horseshoe crabs still underway in Delaware presently is the dredge fishery after the closure of the beach collecting fishery on June 30, 2007. Delaware's annual harvest quota has not been reached yet, so the dredge fishery is still on-going. Under the Emergency Regulations that went into effect on June 11, 2007 up to 100,000 male horseshoe crabs may be harvested and no female horseshoe crabs may be included in the harvest. When the Emergency Regulations expire on September 8, 2007 Delaware's annual harvest limit will revert to 150,000 horseshoe crabs of either sex.

Meanwhile, the Department has proposed regulations to implement the provisions of the amended ASMFC horseshoe crab plan by the normal regulatory process. The

public hearing for these proposed regulations is not scheduled until September 24, 2007, so the earliest that these proposed regulations could be implemented is October 10, 2007. Harvesting over 100,000 horseshoe crabs and including female horseshoe crabs in the harvest before the passage of any new regulations is in direct contradiction to ASMFC requirements for Delaware contained in the ASMFC horseshoe crab plan. Without the emergency regulation, there is an actual and imminent threat that an excessive number of horseshoe crabs will be harvested, and that females will be harvested, in violation of the dictates of the amended ASMFC horseshoe crab plan, thus potentially exposing Delaware to federal sanctions for non-compliance with the ASMFC plan. The threat of non-compliance would be to the resource itself if an excessive number of horseshoe crabs were harvested; and to female horseshoe crabs if they are among those harvested; and to the fishermen who would participate in this harvest who would be adversely affected by a federally imposed closure of our horseshoe crab harvest.

Horseshoe crabs are a vital component to the estuarine food web and support several important commercial industries. Horseshoe crabs are important in the diets of the federally protected loggerhead sea turtle, and the eggs are a seasonally important food item in the diets of at least seven species of commercially and/or recreationally important finfish species. Horseshoe crab eggs also are an important component in the diets of migratory shorebirds using Delaware Bay, which serves as one of the most important migratory stopover sites in North America. The spectacle of the birds feeding on horseshoe crab eggs supports an ecotourism industry of regional significance. In addition, horseshoe crabs are harvested for the manufacture of Limulus Amoebocyte Lysate (LAL). LAL is the worldwide standard for testing virtually all pharmaceuticals for the presence of gram-negative bacteria. Horseshoe crabs are also extensively harvested for use as a primary bait in the American eel and conch (whelk) pot fisheries and to a lesser extent in several other fisheries. Although the epicenter of horseshoe crab spawning and nursery areas is in the Delaware Bay, the horseshoe crab resource is cooperatively managed coast- wide through the Atlantic States Marine Fisheries Commission (ASMFC). The ASMFC has recognized the particular importance of the Delaware Bay to horseshoe crabs and migratory shorebirds.

Horseshoe crabs take 8-12 years to reach sexual maturity. Current estimates place fecundity at approximately 88,000 eggs annually. To place this in context, weakfish often reach sexual maturity in one year and a large (22-inch) female may produce 1.7 million eggs in a single spawning season. Therefore, failure to adequately protect the horseshoe crab resource may result in consequences not fully realized for a period of 8-12 years.

Emergency Regulation 3214 Horseshoe Crab Annual Harvest Limit

The annual harvest limit for horseshoe crabs taken and/or landed in the State shall be 100,000 male crabs or any limit set by the Atlantic States Marine Fisheries Commission as Delaware's current annual quota, whichever is less. No female horseshoe crabs may be taken at any time.